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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

MULTNOMAH YACHT REPAIR, L.L.C., an
Oregon limited liability company,

Plaintiff,

v.

TUG POWHATAN, her engines, tackle, apparel
and equipment; **SAUSE BROS. OCEAN**
TOWING CO., INC., an Oregon corporation,
CUMMINS, INC., doing business as
CUMMINS NORTHWEST,

Defendants.

Case No.: 14-cv-01687-SI

**FIRST AMENDED COMPLAINT IN
REM AND IN PERSONAM**

ADMIRALTY (28 U.S.C. § 1333)

Plaintiff brings this claim under the admiralty jurisdiction of this Court *in rem* against the defendant TUG POWHATAN, her engines, tackle, apparel and equipment, and *in personam* against defendant Sause Bros. Ocean Towing Co., Inc., alleging as follows:

1. Plaintiff Multnomah Yacht Repair, L.L.C., an Oregon limited liability company doing business as Commercial Marine Power Systems, is engaged in the business of yacht repair and the installation and repair of marine power systems for commercial vessels.

2. The TUG POWHATAN is a 96.8-foot twin diesel screw ocean-going tugboat that was, at the time the original complaint was filed, lying afloat on navigable waters within the District of Oregon.

3. Defendant Sause Brothers Ocean Towing Co., Inc. (Sause Bros.) is an Oregon corporation and at all material times was the owner and operator of the TUG POWHATAN.

4. Defendant Cummins, Inc. (Cummins) is an Indiana corporation doing business in Oregon under the assumed business name of "Cummins Northwest." Cummins, Inc. is engaged in the business of selling and servicing industrial engines including marine engines.

FIRST CLAIM FOR RELIEF

(Federal Maritime Lien Act) (Against Sause Bros.)

5. Plaintiff reallege paragraphs 1 through 4.

6. In March, 2013, defendant engaged the plaintiff to perform engine overhaul work on the engines of the TUG POWHATAN. Plaintiff issued work order number 1414 in connection with the engine overhaul work requested by defendant.

7. Between March 23, 2013 and April 21, 2013, plaintiff performed engine overhaul work and other repair work requested on the TUG POWHATAN by defendant in Portland, Oregon. The total labor, parts and shop supplies supplied by plaintiff to defendant in connection with the engine overhaul and other repair work on TUG POWHATAN totaled \$38,722.09.

8. Following completion of the engine overhaul and other work specified by defendant, plaintiff issued its invoice dated April 21, 2013 totaling \$38,722.09 for the work performed on the TUG POWHATAN.

9. Despite demand, defendant has failed to pay plaintiff's invoice.

10. The engine overhaul and other repair work performed by plaintiff on the TUG POWHATAN are "necessaries" within the meaning of the Federal Maritime Lien Act, 46 U.S.C. § 971, and constitute a maritime lien against the TUG POWHATAN.

11. Pursuant to the terms of the contract between plaintiff and defendant as set out on work order number 1414, plaintiff is entitled to 9% interest on the \$38,722.09 invoice from April 21, 2013 until paid.

SECOND CLAIM FOR RELIEF

(Tortious Interference with Economic Relations) (Against Cummins)

12. Plaintiff realleges paragraphs 1 through 4.

13. In March 2013, plaintiff and defendant Sause Bros. entered into a contract under which plaintiff was engaged to perform engine overhaul work on the engines of the TUG POWHATAN. As part of that work, plaintiff sought to order a variety of parts from defendant

Cummins that were necessary to complete the engine overhaul work on the Cummins engines aboard the TUG POWHATAN.

14. Defendant Cummins intentionally interfered with the contract between plaintiff and defendant Sause Bros. by falsely stating that certain Cummins parts needed for the engine overhaul were not readily available without long lead times and by calling Sause Bros. management and falsely stating that plaintiff was not qualified to perform engine overhaul work on Cummins engines.

15. The false statements by Cummins to plaintiff regarding parts availability and to Sause Bros. regarding plaintiff's engine overhaul capabilities were made for the improper purpose of causing Sause Bros. to terminate its engine overhaul contract with plaintiff and to shift that work to defendant Cummins.

16. Defendant Cummins' improper and false statements had their intended effect. Sause Bros. terminated its engine overhaul contract with plaintiff, shifted that work to Cummins by contracting directly with Cummins and relegated plaintiff to a minor role providing support to Cummins and changing out the crankcase ventilation system.

17. As a result of the termination of plaintiff's engine overhaul contract with Sause Bros., plaintiff suffered lost profits of approximately \$130,000 that would have earned had plaintiff performed the engine overhaul contract for Sause Bros.

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18. In connection with performing its engine overhaul contract with Sause Bros., defendant Cummins failed to properly install multiple injectors or installed defective injectors, which then caused a catastrophic failure of the port engine when the TUG POWHATAN sailed from Portland for Coos Bay on April 21, 2013.

19. The severe combustion problems that developed in the port engine on April 21, 2013 resulted in serious damage to that engine's fuel injectors, pistons, cylinders, cylinder liners, turbo chargers, air coolers and associated equipment. Following that incident, Cummins was engaged by Sause Bros. to investigate the cause of the damage that occurred during the voyage from Portland and to repair that damage.

20. Despite the fact that the cause of the damage to the port engine was the fault of Cummins by installing defective injectors or failing to properly install injectors, Cummins blamed plaintiff for the port engine damage, claiming that plaintiff improperly installed Racor crankcase ventilation systems on the port and starboard engines. In fact, the damage to the port engine was the fault of Cummins.

21. Cummins' false statements blaming plaintiff for the damage to the port engine were made for the improper purpose of damaging plaintiff and its reputation. As a result of defendant Cummins' false statements, plaintiff has suffered a long term loss of valuable business with Sause Bros. and significant damage to its reputation throughout the relatively small maritime industry in the Pacific Northwest. Plaintiff has suffered and will continue to suffer

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damage to its reputation and lost business, in an amount presently estimated at \$300,000 and to be specifically proven at trial.

WHEREFORE, plaintiff prays:

1. That process issue out of this Court *in rem* against the defendant TUG POWHATAN, her engines, tackle, apparel and equipment; and *in personam* against Sause Bros. Ocean Towing, Co., Inc.;

2. On plaintiff's First Claim, for judgment *in rem* against the TUG POWHATAN, her engines, tackle, apparel and equipment and *in personam* against defendant Sause Bros. Ocean Towing Co., Inc. in the sum of \$38,722.09 plus contract interest at 9% from April 21, 2013 together with plaintiff's costs and disbursements incurred herein;

3. On plaintiff's second claim against defendant Cummins, for damages in an amount presently estimated at \$430,000 and to be specifically proven at trial, plus prejudgment interest from April 21, 2013 together with plaintiff's costs and disbursements incurred herein; and

4. That this Court grant such other relief as may be proper and just.

DATED this 4th day of March, 2016.

HAGLUND KELLEY LLP

By: /s/ Michael E. Haglund
Michael E. Haglund, OSB No. 772030
Mhaglund@hk-law.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 2016, I served the foregoing **FIRST AMENDED COMPLAINT IN REM AND IN PERSONAM**, on the following:

Thomas E. McDermott James P. McCurdy Lindsay Hart, LLP 1300 SW Fifth Avenue, Suite 3400 Portland, OR 97201 tmcdermott@lindsayhart.com jmccurdy@lindsayhart.com Attorneys for Sause Bros. Ocean Towing Company, Inc.	Anna Raman PREG O'DONNELL & GILLET 222 SW Columbia St., Suite 1575 Portland, OR 97201-6615 Telephone: (503) 224-3650 Facsimile: (503) 224-3649 araman@pregodonnell.com and J.A. (Jay) Felton Rebecca J. McMahon* LATHROP & GAGE LLP 2345 Grand Boulevard, Suite 2200 Kansas City, MO 64108 Telephone: (816) 292-2000 Facsimile: (816) 292-2001 jfelton@lathropgage.com rmcmahon@lathropgage.com *Admitted <i>Pro Hac Vice</i> Attorneys for Third-Party Defendant Cummins Inc. d/b/a Cummins Northwest
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by the following indicated method(s):

- ☐ by **mail** with the United States Post Office at Portland, Oregon in a sealed first-class postage prepaid envelope.
- ☐ by **email**.
- ☐ by **hand delivery**.
- ☐ by overnight mail.
- ☐ by **facsimile**.
- ☒ by the court's Cm/ECF system.

/s/ Michael E. Haglund
Michael E. Haglund